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09/976,221	10/12/2001	Ulrich Zimmermann	414P037Div.	9837

7590

09/05/2003

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EXAMINER

LOVERING, RICHARD D

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,221

Applicant(s)

ZIMMERMANN

Examiner

LOVERING

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on OCT. 12, 2001; JAN. 23 & 30, 2002; AND JUNE 27, 2003.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 7-15 AND 17-25 is/are pending in the application.
- Of the above claim(s) 7, 8 AND 17-21 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 9-11, 13-15 AND 23-25 is/are rejected.
- ☒ Claim(s) 12 AND 22 is/are objected to.
- ☒ Claim(s) 7-15 AND 17-25 are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☒ The drawing(s) filed on 10/12/01 is/are objected to by the Examiner.
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) FROM PARENT CASE
- ☒ Notice of Reference(s) Cited, PTO-892, (1 FROM PARENT CASE, 1 NEW HEREIN)
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Claims 7, 8 and 17-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to ~~a~~ non-elected inventions. Election was made **without** traverse in Paper No. 8.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-11, 24 and 25 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Wilding 2,249,694, esp. Examples 2-5, noting also the paragraph bridging columns 1 and 2 on page 1.

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5. Claims 9, 10, 13, 24 and 25 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Steiner 2,441,729, esp. Example 7.

6. Claims 9, 10, 13-15, 24 and 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Poncelet et al. "Production of Alginate Beads by Emulsification/Internal Gelation", Applied Microbiology Biotechnology, (1992) 38: 39-45. The instantly-claimed method of cross-linking ionotropic gels with a cross-linking agent is anticipated by Poncelet et al. (esp. Summary on page 38; Materials and Methods on page 39; and Discussion-Alginate as cell entrapment material bridging pages 42 and 43), or is at least clearly within the purview of Poncelet et al., and thus would have been obvious therefrom to one having ordinary skill in the art at the time applicants' invention was made. Addressing the 103 aspect of this ground of rejection: As to claim 15 herein, while Poncelet may not have exemplified using their bead ^x capsules to contain live biological cells, they clearly suggest doing so in Discussion-Alginate as cell entrapment material, and thus render it prima facie obvious.

7. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicants regard as their invention.

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8. Claim 23 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Regarding claim 23, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

9. Claims 12 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the method of claim 12, wherein cross-linking is induced by UV light exposure) or the method of claims 22 and 23 (wherein the recited cage molecules are used which bind the counterions in an electronic ground state, etc.).

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12. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "20" and "22" have both been used to designate the mill. Correction is required.

13. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 29. Correction is required.

14. The disclosure is objected to because of the following informalities: There is no heading --BRIEF DESCRIPTION OF DRAWINGS-- on page 5 between lines 17 and 18.

Appropriate correction is required.

15. Applicants should insert the status of the parent case (now abandoned) in the paragraph inserted on page 1, line 2 of the specification by pre-amendment A filed October 12, 2001.

16. The remaining references listed on the attached Form PTO-1449 (copy from parent case) and Forms PTO-892 (one copy from parent case and one new herein) are cumulative to the references applied herein, and/or further show the state of the art.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc
September 2, 2003

Richard D. Lovering
RICHARD D. LOVERING
PRIMARY EXAMINER
GROUP ~~1700~~ 1700